

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Roanoke Division

BRUCE A. ESTES,

Plaintiff,

v.

CIVIL ACTION NO. 7:15-cv-00154

HAROLD CLARKE, et al.,

Defendants.

AFFIDAVIT

State of Virginia, City of Richmond, to-wit:

MARK ENGELKE, first being duly sworn, states as follows:

1. I am the Director of Food Services for the Virginia Department of Corrections (VDOC). I have worked for the VDOC for 28 years and began in Food Service in 1997. I became the Director of Food Services for the VDOC in 2007.

2. I base the information contained in this affidavit on personal knowledge and records maintained in the regular and ordinary course of business.

3. I have been advised of this lawsuit filed by offender Bruce A. Estes (#1185224). Estes complains that the Common Fare (CF) diet provided at River North Correctional Center (RNCC) is not Kosher, which hinders his ability to practice his faith.

4. The CF diet was developed to meet the dietary needs of offenders who, for religious reasons, require a Kosher, Halal or non-pork diet and whose dietary requirements cannot be accommodated with foods provided by the Master Menu. The CF menu has been analyzed and certified as meeting or exceeding minimum daily nutritional requirements. Policies and procedures for CF are set forth in VDOC Food Service Manual. A copy of the Food Service Manual is attached as Enclosure A.

5. Only authorized food items are served on the CF menu. All foods purchased and used for CF are consistent with or certified "Kosher" by a recognized Orthodox Standard, such as "U," "K," or "CRC," or certified Halal. The VDOC Food Service Manual provides clear guidelines regarding food preparation and service of CF food items. It addresses areas such as food preparation, serving trays and utensils, assignment to and removal from CF and various special observances. Appropriate procedures are in place to ensure that food service workers, including offender kitchen workers, receive appropriate training and supervision in

the proper handling of CF food. Food Service Managers continually monitor the CF food preparation area and workers to ensure that the CF policy is being followed. All health and safety guidelines and personal hygiene rules are strictly enforced.

6. I am familiar with the Kashrut dietary laws referenced by offender Estes in his lawsuit. The article attached to his lawsuit states: "If you buy your meat at a kosher butcher and buy only kosher certified products at the market, the only thing you need to think about is the separation of meat and dairy." The CF menu does not mix meat and dairy. In fact, there is no meat offered on the CF menu – only tuna. The article also states: "All fruits and vegetables are kosher....However, bugs and worms that may be found in some fruits and vegetables are not kosher. Fruits and vegetables that are prone to this sort of thing should be inspected to ensure that they contain no bugs." Fruits and vegetables offered at VDOC facilities are routinely inspected for freshness and properly cleaned before serving.

7. Food Service staff at RNCC comply with the guidelines of the VDOC Food Service Manual. CF meals are prepared in an area separate from the regular menu preparation, with separate utensils and with designated CF equipment. The hot meals are prepared on designated hot



Food Service Manual

Effective Date
July 1, 2012
Amended
4/22/13

Chapter
4
Operating Level
Food Service Department

Supersedes
FSM Chapter 4 (1/1/10);
Deputy Director Memo Log #31-2010

Subject
RELIGIOUS DIETS/COMMON FARE MEALS

ACA Standards
4-4319; 4-ACRS-4A-03

Incarcerated Offender Access
Yes ☒ No ☐

FOIA Exempt Yes ☐ No ☒
Attachments Yes ☐ No ☒

Office of Primary Responsibility
Director of Food Services

I. PURPOSE

This chapter of the Food Service Manual provides a religious diet program that reasonably accommodates special diets to meet the basic nutritional needs of offenders whose religious beliefs require the adherence to religious dietary laws. (4-4319, 4-ACRS-4A-03)

II. COMPLIANCE

The Food Service Manual is issued with the intent to pull together information from a variety of sources such as directives, operating procedures, regulations, and other mandatory requirements and applies to all Food Service activities in facilities operated by the Department of Corrections (DOC). Contract Food Service vendors shall follow all provisions of the Food Service Manual within the specifications of their contract. This manual shall not change requirements contained in any approved directive or operating procedure, but does contain specific operational details not included in other documents. Practices and procedures shall comply with applicable State and Federal laws, Board of Corrections regulations, ACA standards, Board of Corrections policies, and DOC directives and operating procedures.

III. DEFINITIONS

Common Fare - An appropriate religious diet for offenders whose religious dietary needs cannot be met by the Master Menu; the Common Fare menu is based on a 14-day cycle and meets or exceeds minimum daily nutritional requirements.

Eid ul Fitr - Prayer and Fast breaking; takes place at the end of the month of fasting

Eid ul Adha - Prayer service and special meal; takes place approximately 70 days after the end of the month of fasting

Meals for Religious Observances - Special meals are provided for the following religious observances: Nation of Islam (NOI) Month of Fasting, Passover, and Ramadan.

NOI Month of Fasting - The Fast observed by the Nation of Islam

NOI Month of Fasting Menu - An appropriate religious menu for Nation of Islam offenders whose religious dietary needs cannot be met from the Master Menu during the Observance of the NOI Month of Fasting; a 28-day cycle menu is provided by the DOC Dietitian to be used during the NOI Month of Fasting.

Observance of Ramadan - The Fast observed by traditional Muslims

Passover - The religious holiday celebration observed by Jews

Ramadan - The ninth month of the Islamic lunar calendar, observed by the majority of Muslims by fasting (abstaining from food and drink) from dawn to sunset

Ramadan Menu - An appropriate religious menu for Muslim offenders whose religious dietary needs cannot be met from the Master Menu during the Observance of Ramadan; a 28-day cycle menu is provided by the DOC Dietitian to be used during Ramadan.

Seder Plate - A ceremonial plate used during Passover, generally consisting of: matzo, roasted chicken,

A

bitter herb (parsley), vegetables (parsley or celery), chopped apples and nuts (mixed), cup of salt water.

Violation of Common Fare - Offenders may be considered in violation of the Common Fare program if they do not adhere to the rules set forth in the Common Fare Agreement 841_F8. Each offender will be required to read and sign a copy of this agreement prior to beginning the Common Fare program.

IV. COMMUNITY CORRECTIONS FACILITIES

Specific religious diets are not offered at Detention and Diversion Centers due to short duration and voluntary nature of the programs. Offenders are offered the option of choosing non-meat meals from the Master Menu to meet dietary requirements.

V. COMMON FARE

- A. Common Fare is intended to accommodate offenders whose religious dietary needs cannot be met by the Master Menu. The Common Fare Menu has been analyzed and certified to meet or exceed minimum daily nutritional requirements. A copy of the Common Fare Menu and nutritional analysis letter is available from the DOC Dietitian.
- B. Common Fare will be offered at selected facilities designated by the Chief of Corrections Operations. At facilities where Common Fare is offered, the Common Fare program should operate in accordance with this manual. All Food Service Staff in designated Common Fare facilities will be trained in Common Fare. (see Food Service Staff Common Fare Training FSM_F7)
- C. The planned Common Fare menu may not be changed at the facility level, except where seasonal availability of produce items warrants that substitutions be made. Under such circumstances, the Food Operations Director/Manager may make temporary nutritionally equal substitutions with fresh seasonal produce. All other rules for substitutions apply to the Common Fare menu.
- D. All foods purchased for this program, except fresh fruits and vegetables, will be certified by a recognized Orthodox Standard, such as "U", "K", or "CRC.". No pork or pork derivatives may be used.
NOTE: A requirement of Common Fare/Kosher is that dairy and meat/chicken/fish are not served in the same meal. If a menu substitution is made, do not mix dairy and meat.
- E. Information regarding assignment to Common Fare may be found in Operating Procedure 841.3, *Offender Religious Programs*.
- F. Commissary Products - Offenders on Common Fare may purchase and consume only food items from the commissary that are not clearly marked as containing pork or pork derivatives or containing a combination of meat and dairy ingredients. A separate commissary list that allows Common Fare offenders to only purchase certain items is not permitted.
- G. Hot Entree Availability - Hot entrée should be served three times a week in accordance with the menu and should be cooked in designated Common Fare equipment. Cooking or reheating of any other food items is not permitted in the Common Fare Program.
- H. Beverages - Beverages available for the general population are allowed for Common Fare.
- I. Food Storage - Upon delivery of Common Fare food products to the kitchen, the products will be stored in special designated areas for staging and/or storage until items are ready for use.
 - 1. A separate refrigeration unit or an area within available cooling systems will be set aside for staging and storage of refrigerated Common Fare food products. The designated unit/area will be clearly marked and identified as Common Fare.
 - 2. Dry storage Common Fare food items will be stored in a separate area from other items. In case of limited dry storage space, a special area within the existing storage area will be identified, marked, and used for staging and storage of non perishable Common Fare food products. The designated room/area will be clearly marked and identified as Common Fare.

3. Frozen Common Fare food items will be stored in a separate area from other items. In case of limited frozen storage, a special area within the existing frozen storage area will be identified, marked, and used for staging and storage of frozen Common Fare food products. The designated unit/area will be clearly marked and identified as Common Fare.

J. Food Preparation

1. All food preparation will be conducted in a designated Common Fare area.
2. All pans, lids, utensils, and the equipment used for the soy/rice mix shall be marked (CF) for Common Fare and shall not be used for any other purpose.
 - a. Food service utensils needed for use in preparing, serving, and transporting Common Fare food items will be stored, handled, used, and cleaned separately from non Common Fare food utensils.
 - b. Utensils will be washed and sanitized in the pot and pan area before general population utensils have been cleaned.
 - c. Sinks will be washed, sanitized, and refilled before Common Fare utensils are cleaned.
 - d. All utensils will be stored on a separate shadow board identified as Common Fare.
3. Common Fare Food Service personnel will not handle non Common Fare food items while preparing or cooking Common Fare food items.
4. Common Fare food items will be prepared and cooked in accordance with the Food Service Manual and state and federal regulations.
5. The Food Operations Director/Manager or designee will provide appropriate training and supervision for offender kitchen workers assigned to prepare Common Fare meals. (see Offender Worker Common Fare Training FSM_F8)

K. Serving Trays and Utensils

1. Separate reusable serving trays, covers, eating utensils, and cups will be used for Common Fare and will be stored separately.
2. Common Fare trays, covers, eating utensils, and cups will be placed in the clean and sanitized dishwashing machine for washing and sanitizing before general population trays and utensils are washed. Dishwashing water will be drained and refilled before washing Common Fare items.

L. Serving of Common Fare Items

1. Common Fare items will be prepared and placed in serving trays designated for the Common Fare diet. All items will be prepared in advance of the feeding period and placed under refrigeration in the designated refrigerator unit. (Except for Common Fare hot items).
2. Temporary assignment to special housing should not affect an offender's participation in the Common Fare program. An offender approved for Common Fare should be provided Common Fare meals while in special housing or the facility medical unit.

M. Documentation of Meals

1. The Food Operations Director/Manager should ensure that the *Common Fare Diet Attendance Log* in VACORIS is completed at each meal for offenders receiving Common Fare meals.
2. An offender who is assigned to participate in the Common Fare program will not select other food items, except beverages, from the Master Menu. Violations will be reported to the Facility Unit Head or designee.
3. An offender on Common Fare, who requests to participate in Observance of Ramadan, the NOI Month of Fasting, or Passover, may choose to remain on the Common Fare diet or to eat from the respective special observance menu without penalty to Common Fare status. Each offender on Common Fare shall indicate this choice when registering for the respective special observance menu and the choice may not be changed during the period of fasting.

N. Removal from Common Fare

1. An offender may voluntarily withdraw from Common Fare.
 - a. An offender that requests to be voluntarily removed from Common Fare should provide the reason for the removal.
 - b. The withdrawal should be documented by ICA action with review and approval by the Facility Unit Head or designee.
 - c. An offender who voluntarily withdraws from Common Fare cannot reapply for one year.
 - d. An offender who voluntarily withdraws from Common Fare for the second time cannot reapply for two years.
 - e. An offender that voluntarily withdraws from Common Fare a total of three times over the entire incarceration period will be removed for 4 years on the third and each subsequent occasion.
 - f. An offender that voluntarily withdraws from Common Fare and wishes to again receive the diet after the waiting period noted above, must formally apply subject to ICA and CCS review and Facility Unit Head or designee approval. (changed 4/22/13)
2. Offenders will be suspended/removed from Common Fare for violating any of the criteria of the Common Fare Agreement 841_F8. The Food Operations Director/Manager or other staff should notify the Facility Unit Head or designee if:
 - a. An offender fails to pick up a minimum of seventy-five percent of meals served per month. (See minimum number of meals monthly schedule - attached to *Common Fare Agreement*).
 - b. An offender is detected or observed eating, trading, or possessing unauthorized food items from the main line.
 - c. An offender is observed giving away or trading a Common Fare food item.
 - d. An offender is found to have purchased or observed eating food items from the Commissary inconsistent with dietary requirements of the Common Fare program.
 - e. An offender has not continued to attend services or other religious activities at least twice per month, if available.
3. Violation of Common Fare will result in the following sanctions, of which the first and second offense sanctions will be imposed by the Facility Unit Head or designee:
 - a. First Offense - removal from Common Fare for 6 months
 - b. Second Offense - removal from Common Fare for 1 year
 - c. Third and each subsequent Offense - removal from Common Fare for 4 years imposed at an Institutional Classification Authority hearing and approved by the Facility Unit Head or designee ~~Central Classification Services~~. (changed 4/22/13)
 - d. An offender removed from Common Fare for a First or Second Offense may submit a written request to the Facility Unit Head or designee to be reinstated after the penalty period has expired. The reinstatement must be documented in VACORIS.
 - e. An offender removed from Common Fare for a Third and each subsequent Offense that wishes to again receive the diet after the penalty period, must formally apply subject to ICA and CCS review and Facility Unit Head or designee approval. (changed 4/22/13)
4. Combinations of voluntary withdrawals and removals due to violation of Common Fare
 - a. If an offender is removed from Common Fare, either voluntarily or due to violations of the *Common Fare Agreement*, 4 or more times during the current period of incarceration, each removal shall be for 4 years.
 - b. Example: An offender has voluntarily withdrawn from Common Fare once and been removed twice for violations of Common Fare. If the offender voluntarily withdraws to avoid a third violation, he will be removed and cannot reapply for 4 years due to this being the fourth time he has come off the Common Fare Diet.

5. Within two working days, The Facility Unit Head or designee will notify the Food Operations Director/Manager with the names of any offender removed or voluntarily withdrawn from Common Fare.

VI. RAMADAN AND NOI MONTH OF FASTING

- A. The Ramadan and NOI Month of Fasting religious observance meals provide religious diets that reasonably accommodate certain religious or spiritual dietary needs to the extent feasible during Observance of Ramadan and NOI Month of Fasting.
- B. Ramadan and NOI Month of Fasting Menus are intended to accommodate offender's religious dietary needs that cannot be met by the Master Menu. The Ramadan and NOI Month of Fasting Menus are provided each year by the DOC Dietitian. Both menus are nutritionally adequate and equivalent in calories to the Master Menu.
- C. Ramadan and NOI Month of Fasting religious observance meals are available only to offenders who require special religious diets during Ramadan and NOI Month of Fasting and are for accommodating their sincere religious practices.
- D. A memorandum will be sent from the Chief of Corrections Operations annually to notify facilities of the dates for Ramadan and NOI Month of Fasting. The dates for fasting of the holy month of the Islamic faith, called Ramadan, are confirmed by the Islamic Center of Virginia. The observance will continue for a period of 29-30 days.
 1. The Observance of Ramadan or the NOI Month of Fasting should not interfere with regular work or program assignments.
 2. Offenders participating in the Observance of Ramadan or the NOI Month of Fasting are not exempt from random drug testing during this period. Randomly selected offenders who are fasting during daylight hours should be tested during those periods of time when they are allowed to eat and drink (i.e. before dawn and after sunset). All other drug-testing regulations apply.
 3. Participating offenders should be permitted to fast during the daylight hours and to observe prescribed times of prayer and spiritual reading individually after work assignments and activities have been accomplished.
- E. Menu Changes - The planned Ramadan and NOI Month of Fasting Menus will not be changed at the facility level without approval of the DOC Dietitian. Offenders observing the NOI Month of Fasting require special foods that are specified in the NOI Month of Fasting Menu. Although menus are different, both groups observe the same fasting period and may be fed at the same time.
- F. Observance of Ramadan (Traditional Muslim) - Reasonable accommodations for the participating offender should be consistent with the proper maintenance of security and the orderly facility operation. For those offenders participating in Observance of Ramadan, the following should be observed:
 1. Offenders desiring to observe Ramadan should make their intentions known, in writing to the Facility Unit Head or designee at least 30 days prior to the beginning of Ramadan each year according to procedures established by the Chief of Corrections Operations.
 2. Offenders observing Ramadan shall be fed meals prepared in accordance with the Ramadan menu.
 3. The morning meal should be served and eaten 30 minutes before dawn. The evening meal should be served and eaten after sunset. Offenders must be allowed at least 20 minutes to consume this meal. A bag meal will be distributed to participating offenders during the evening hours. Offenders are authorized to have the bag meal in their living areas, however, due to health and safety standards, the bag meal must be consumed or discarded within four hours of receipt. It is mandatory that every offender who plans to observe Ramadan complete the 4-Hour Rule Agreement FSM_F9 and submit it to the Food Service Department prior to the beginning of the fast dates.
 4. Eid ul Fitr - Prayer service and fast breaking - This is a required holy day at the end of Ramadan that

will be permitted for persons participating in Ramadan. The activities include a prayer service to be held before noon and a special meal to be served on the day following the last day of fasting or within three days following the last day of fasting. Only one day may be selected. Based on guidance from the Director of Food Services, the feast meal may be served to the entire offender population.

5. Eid ul Adha is a required holiday approximately 70 days after the end of Ramadan and is permitted for offenders participating in Observance of Ramadan. The activities include a prayer service before noon and a special meal which will be served on that day. Based on guidance from the Director of Food Services, the feast meal may be served to the entire offender population.

G. Month of Fasting (Nation of Islam) - Reasonable accommodations for the participating offender should be consistent with the proper maintenance of security and the orderly facility operation. The following guidelines should be observed:

1. Offenders desiring to observe the NOI Month of Fasting should make their intentions known, in writing to the Facility Unit Head or designee at least 30 days prior to the beginning of the NOI Fast, according to procedures established by the Chief of Corrections Operations.
2. The NOI Month of Fasting Menu will be used for those participating in the Nation of Islam Month of Fasting.
3. The morning meal should be served and eaten 30 minutes before dawn. The evening meal should be served and eaten after sunset. Offenders must be allowed at least 20 minutes to consume this meal. A bag meal will be distributed to participating offenders during the evening hours. Offenders are authorized to have the bag meal in their living areas, however, due to health and safety standards, the bag meal must be consumed or discarded within four hours of receipt. It is mandatory that every offender who plans to observe NOI Month of Fasting complete the 4-Hour Rule Agreement FSM_F9 and submit it to the Food Service Department prior to the beginning of the fast dates.
4. Eid ul Fitr - Prayer service and fast breaking - This is a required holy day at the end of the Month of Fasting that will be permitted for persons participating in the Month of Fasting. The activities include a prayer service to be held before noon and a special meal to be served on the day following the last day of fasting or within three days following the last day of fasting. Only one day may be selected. Based on guidance from the Director of Food Services, the feast meal may be served to the entire offender population.
5. Eid ul Adha is a required holiday approximately 70 days after the end of Ramadan and is permitted for offenders participating in the Month of Fasting. The activities include a prayer service before noon and a special meal to be served on that day. Based on guidance from the Director of Food Services, the feast meal may be served to the entire offender population.
6. Menu Notes (Nation of Islam Month of Fasting) - Substitutions - If a menu substitution must be made, refer to this list of UNACCEPTABLE foods:
 - a. Pork, beef, poultry
 - b. Dried Beans, (except Navy) and peas
 - c. White and corn bread
 - d. Soybean flour or oil
 - e. Kale, turnip, collard, or mustard greens
 - f. Sweet or white potatoes
 - g. Peanuts, coconut, or other nuts
 - h. Cheese, made with any pork products
 - i. Refined sugar products
 - j. Grapefruit

H. Removal from Ramadan and NOI Month of Fasting Participation

1. While participating in Ramadan or NOI Month of Fasting, offenders observed requesting or eating a meal from the regular serving line will be removed from participation in Ramadan and NOI Month of Fasting after proper identification.
2. Proper identification of offenders breaking the Ramadan or NOI Month of Fasting fast
 - a. Any staff member observing an offender participating in Ramadan or NOI Month of Fasting requesting or eating a meal from the regular serving line shall immediately notify a security supervisor.
 - b. The security supervisor shall approach the offender and examine the offender's identification card and compare it to the Ramadan or NOI Month of Fasting Master Pass list for confirmation.
 - c. If the offender is confirmed to be a Ramadan or NOI Month of Fasting participant, but has requested or is eating a regular meal, the security supervisor shall make a copy of the offender's identification card and attach it to an Internal Incident Report documenting the incident.
 - d. The Internal Incident Report shall be forwarded to the Chief of Security who will be responsible for removing the offender from the Ramadan or NOI Month of Fasting Master Pass list for the duration of the current fast and any related ceremonial meals. Note that removal from the Ramadan or NOI Month of Fasting Master Pass list does not preclude participation in weekly religious services.
3. Offenders may appeal removal from the Ramadan or NOI Month of Fasting Master Pass list through the *Offender Grievance Procedure*.

VII. PASSOVER

- A. The Passover religious observance meals provide a religious diet that reasonably accommodates certain religious or spiritual dietary needs to the extent feasible during Passover. Religious dietary accommodations provided under this procedure meet basic nutritional needs.
- B. Passover religious observance meals are available only to offenders who require special religious diets during Passover and are for accommodating their sincere religious practices.
- C. A memorandum will be sent from the Chief of Corrections Operations annually to notify facilities of the dates for Passover.
- D. Changes - The planned Passover observance will not be changed at the facility level.
- E. Offenders celebrating Passover can eat from the regular serving line with the exception of matzo substituting for bread.
- F. Offenders desiring to observe Passover should make their intentions known in writing to the Facility Unit Head or designee at least 30 days prior to the beginning of Passover.
- G. A Seder plate is permitted for the first two nights of Passover. Only one Seder Plate per service is necessary for the celebration of Passover. The Seder Plate is symbolic and should not be eaten from.
- H. Special items such as matzo may be ordered from vendors, using the eVA system.

VIII. REFERENCES

Operating Procedure 830.1, Facility Classification Management
Operating Procedure 841.3, *Offender Religious Programs*

IX. FORM CITATIONS

Common Fare Agreement 841_F8
Food Service Staff Common Fare Training FSM_F7
Offender Worker Common Fare Training FSM_F8
4-Hour Rule Agreement FSM_F9

X. REVIEW DATE

The Director of Food Services shall ensure that each Chapter of the Food Service Manual is reviewed annually and revised as necessary.

Signature Copy on File

5/17/12

Mark E. Engelke, Director of Food Services